IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.868 OF 2002

The State of Maharashtra. ..Appellant.
Vs.
Sohan @ Rinkal Arjun @ Mohan Gujarathi(Rathod) and arn. ..Respondents.

Mr. K.V. Saste, APP. for the Appellant.

CORAM: B.H.MARLAPALLE &
R.S. MOHITE, JJ.
DATE : 23rd February, 2007

P.C.

1. Heard Mr.Saste, the learned A.P.P.

2. The learned Additional Sessions Judge at Gadhinglaj decided the Sessions Case Nos. 7,19 and 20 of 2001 by common judgment and order dated 30.3.2002 and acquitted the accused Nos. 2 and 4 from all the offences punishable under section 395, 332, 353, 379 of the Indian Penal Code. The accused No.1 Jagdish was convicted and sentenced for the offences punishable under Section-395, 379, 353 and 334 of the Indian Penal Code by reasoned common judgment and order. He approached this court by Appeal No.481/2002 which came to be partly allowed by the learned Single Judge on 12.8.2003 and his conviction and sentence under Section 395 of the Indian Penal Code was set aside while remaining conviction and sentence was confirmed.

3. The State had filed Cri.Appeal Nos.869 and 870 of 2002 against the accused Nos. 2 and 4 for their acquittal from the Sessions Case Nos. 19 and 20 of 2001. Both these appeals also came to be dismissed by the Division Bench for failure in taking steps to serve the respondents for more than two years. This third appeal is filed by the State against the accused Nos. 2 and 4 in Sessions Case No.7 of 2001 and therefore, we have considered the same on its own merits.

4. P.W.No.7 was the Special Executive Magistrate who had conducted the test identification parade and P.W.No.3 Jainabi and P.W.No.6 Bilkis were the main witnesses who identified the accused in the said test identification parade. On sifting all the evidence of P.W.No.3,6 and P.W.No.7, the learned Judge of the Trial Court held that the test identification parade was conducted without following the rules and guide-lines framed by this court and more glaring defect in the same was all the four accused were made to stand up in the single parade. In the said parade as well as before the court, the identification of the accused including the accused No.2 by P.W.No.3 and 6 was contradictory to each other and therefore, the learned Judge of the Trial Court held that the identification of the witnesses was

not reliable. As far as the accused No.2 is concerned, no incriminating articles were seized from him and there was no reliable evidence to connect him with the offence of dacoity, as observed by the Trial Court. We do not find any error in reaching to this findings by the Trial Court and these findings are based on evidence that was placed before the Trial court by the prosecution. We therefore, do not find any case for reconsideration by us.

4. Hence, the appeal fails at the threshold of the same, is hereby dismissed.

(R.S. MOHITE, J.) **(B.H. MARLAPALLE, J.)**